

## HIST 362: Sex, Gender and the Law

Professor Alison Lefkowitz

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Class time:

Class room:

Office hours:

Office location: Cullimore Hall 327

**Prerequisites:** HUM 101, HUM 102 and one from among HUM 211, HUM 212 and HIST 213 or their equivalents with a grade of C or better.

**Course Description:** This course examines how the U. S. legal system has dealt with the problems of sex and gender; surveys laws that dictated different roles for men and women as well as seemingly gender-neutral laws that affected men and women differently; tracks the designation of sexual acts as legal or illegal and the ways that race, class, and nationality complicated these relationships. (3credit hours)

### Course Calendar

#### Week 1: Introduction

--Henrik Hartog, "Pigs and Positivism" *Wisconsin Law Review* 899 (1985).

#### Week 2: The Legal Status of Women in the Colonial Period

--Cornelia Hughes Dayton, "Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village," *William and Mary Quarterly*, 48 (Jan. 1991), 19-49.

--Kerber, *No Constitutional Right to Be Ladies*, chapter 1.

--Sharon Block, "Rape without Women: Print Culture and the Politicization of Rape, 1765-1815," *The Journal of American History* (December 2002), 849-868.

#### Week 3: Marriage

--Hendrik Hartog, *Man and Wife in America: A History* (Harvard University Press, 2000), chapters 2, 4.

--William Blackstone, *Commentaries on the Laws of England*, Book the First, Chapter the Fifteenth: Of Husband and Wife.

-- *Fisher v. Allen*, 3 Miss. 611 (1837).

-- Simon Stern and Timothy Stewart-Winter, "Picturing Same-Sex Marriage in the Antebellum United States: The Union of 'Two Most Excellent Men' in Longstreet's 'A Sage Conversation,'" *Journal of the History of Sexuality* 19 (May 2010), 197-222.

#### Week 4: Slavery and Gender

--Virginia Laws of Slavery and Servitude

-- *State of Missouri v. Celia, A Slave* (1855).

--Ariela J. Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South," 108 *Yale Law Journal* 109 (1998).

--Kerber, *No Constitutional Right to Be Ladies*, chapter 2.

#### Week 5: Postbellum Challenges to the Gender Order

--Barbara Y. Welke, "When All the Women Were White, and All the Blacks Were Men: Gender, Class, Race, and the Road to Plessy, 1855-1914," *Law and History Review* 13 (1995), 261-316.

--*Bradwell v. Illinois*

--Ellen Carol DuBois, "Taking the Law Into Our Own Hands: Bradwell, Minor, and Suffrage Militance in the 1870s," in Marjorie Spruill Wheeler, ed., *One Woman, One Vote: Rediscovering the Women's Suffrage Movement* (New Sage Press, 1995).

--*Minor v. Happersett*

### **Week 6: Protectionism**

--Alice Kessler-Harris, *In Pursuit of Equity*, chapter 1.

--Susan Glaspell, "A Jury of Her Peers"

--*Adkin v. Children's Hospital*

--*Goesaert v. Cleary*

--*Muller v. Oregon*

### **Week 7: The New Deal and Gender**

--Alice Kessler-Harris, *In Pursuit of Equity*, chapters 2-3.

--Margot Canaday, *The Straight State*, chapter 3.

--Linda Gordon, "Social Insurance and Public Assistance: Gender in American Welfare Thought," *American Historical Review*, (Feb 1992).

### **Week 8: Sex across the Color Line**

--Peggy Pascoe, "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America," *The Journal of American History* (June 1996), 44-69.

--Jane Dailey, "Sex, Segregation, and the Sacred After Brown," *Journal of American History* (June 2004): 119-44.

--*Loving v. Virginia*

### **Week 9: Fighting the Gendered Order**

--Alice Kessler-Harris, *In Pursuit of Equity*, chapter 4-6.

--The Equal Rights Amendment

--Serena Mayeri, *Reasoning from Race*, chapter 1.

--*Hoyt v. Florida*

### **Week 10: Undoing Gendered Roles**

--Kerber, *No Constitutional Right to Be Ladies*, chapter 4.

--Serena Mayeri, *Reasoning from Race*, chapter 2.

--*Reed v. Reed*

--Louis Hyman, "Ending Discrimination, Legitimizing Debt: The Political Economy of Race, Gender, and Credit Access in the 1960s and 1970s," *Enterprise and Society* 12(2011), 200-232.

### **Week 11: Sex and the Military**

--Kerber, *No Constitutional Right to Be Ladies*, chapter 5.

--*Rostker v. Goldberg*

--Canaday, *The Straight State*, chapters 4-5.

### **Week 12: Reproductive Rights**

--Reva B. Siegel, "Reasoning from the Body: An Historical Perspective on Abortion Regulation and Questions of Equal Protection," 44 *Stanford Law Review* (1992), 261-381.

--Hyde Amendment

--*Roe v. Wade*

--*Planned Parenthood v. Casey*

### **Week 13: The Intersection of Gender and Sexuality**

--Canaday, *The Straight State*, chapter 6.

--*Bowers v. Hardwick*

--Mary Anne Case, "Marriage Licenses" 89 *Minnesota Law Review* 1758 (2005).

-- Katherine Turk, "'Our Militancy is in Our Openness': Gay Employment Rights Activism" in *California and the Question of Sexual Orientation Under Title VII*, *Law and History Review*, forthcoming 2013.

### **Week 14: Contemporary Issues in the Law**

--*Nevada Department of Human Resources v. Hibbs*

--*Walmart Stores v. Dukes*

-- Daniel Hurewitz, "Sexuality Scholarship as a Foundation for Change: *Lawrence v. Texas* and the Impact of the Historians' Brief," *Health and Human Rights*, vol. 7, no.2 (2004), 205-216.

### **Textbook and References**

--Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth Century America* (Princeton University Press, 2009).

--Linda Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (Hill and Wang, 1999).

--Alice Kessler-Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20<sup>th</sup> Century America* (Oxford University Press, 2003).

### **Grading scheme**

- 1) Attendance, participation, and careful reading of the assigned texts. This class will mix lecture and discussion. You will be expected to participate in discussion. You cannot miss more than 4 classes and still pass the course. (20%)
- 2) Weekly response papers. These should be no more than a page in length and use at least two of that week's assigned readings. Each response should address the theme I assign for that week. Late responses will not be accepted. (20%)
- 3) Current events. You will be responsible for briefly presenting coverage of a current event (newspaper, magazine, internet, or tv/radio spot) related to gender, sex, and the law three times over the course of the semester. These should be news rather than opinion pieces. We will discuss these legal events in class and how they relate to the history we're exploring (10%)
- 4) A midterm. The exam will have identifications/short answer questions and one essay based on the themes and readings in the first half of the course. (20%)
- 5) 8-10 page final paper. In this paper, you will be responsible for tracing a significant court case backwards or forwards through the legal system. You will select the case from several options I provide you. The purpose of the paper is to allow you to evaluate how the court's

approach changed or stayed the same, and to make an argument about what historical circumstances may have influenced the ruling. (30%)

<b>Learning Outcomes</b>	<b>Assignments to Assess Outcomes</b>
a) track the changes and continuities in the American legal system related to gender and sexuality	1, 2, 3, 4, 5
b) identify how these changes came to pass in class discussion and written assignments	1, 2, 3, 4, 5
c) engage in debate on the relationship between power and the law	1, 2, 3
d) assess interpretive approaches and biases in secondary sources	1, 2, 3, 4, 5
e) make arguments using legal documents as primary sources	1, 2, 4, 5
f) relate historical changes to present day legal issues.	1, 3

**Code of Conduct:**

--Though I hope we disagree on many different issues, I expect you to treat the class, your fellow students, and me with respect at all times.

--No cell phones, no texting, no gchatting, no facebook, etc. If students cannot conduct themselves without disruption, I will disallow computers in the classroom.

--Plagiarism and other forms of academic dishonesty are unacceptable. You will be submitting papers via turnitin. For further information on academic dishonesty and the policy I will follow if I discover any problems, see: <http://www.njit.edu/academics/pdf/academic-integrity-code.pdf>